1949.

File No. O.L. Improvement 49

Legal Department-

A BRANCH

Subject:—Opinions under the Bombay Land Improvement Act 1883

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File No. O Land Improvement 149

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C O N T E N T S.

Legal Department File No. C.Land. Improvement/49.

Cr. No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Land Improvements Act, 1939.	
1.	C.No.6241 4/6/1949.	Section 8(e) Grant of taqavi loan. "Benefit of the Estate" of under Hindu Law	1 - 4.
2.	C.No.6707 3/8/1949.	The Bombay Land Improvement Schemes Act. "Section 23(1) whether any one can claim compensation for damage caused to his property by breach of lands constructed under the provisions of the "Bombay Land Improvement Schemes Act 1942.	5 - 6.
3.	C.No. 7021 25/8/1949.	The Bombay Land Improvements Schemes Act, Section 25, Whether District Records can issue directions for preparations of land improvement schemes without directions from Government.	7 - 8.

DTR.

6/6.

Grant of tagavi loan

"Benefit of the Estate" under Hindu Law.

It is true that tagavi loans can be granted for the purchase of an oil engine and construction of a well and under section 8(c) of the Land Improvements Act, 1883, a written order under the hand of an officer empowered to make loans under this Act that the improvement is one benefitting the land specified would be conclusive evidence. But that would be only for the purposes of that Act. Consequently unless the loan is proved to be for a legal necessity according to Hindu Law, the minor co-parceners of the joint Hindu family in the present case would not be liable for the debt. There is a conflict of opinion as to the meaning of the words " for the benefit of the estate" so as to constitute a legal necessity. One view is that the transaction for which the loan is taken must be of a defensive character calculated to protect the estate from some threatened danger or destruction. Another view is that for a transaction to be for the benefit of the estate it is sufficient if it is such a prudent owner or rather a trustee would have carried out with the knowledge that was available to him at the time of the transaction. The Bombay High Court shares the latter view (Mulla's Hindu Law, p.283).A transaction to be binding on the family must be one which not only confers a benefit upon the estate but is necessary for the good management (see Durgaprasad Barhia V.Jewdhari Singh, I.L.R. 62 Calcutta 733). The loan of Rs.10,000 asked for by Mr. Pandya, the manager of the family in the present case, may confer a benefit upon the land but looking to the extent of the land and the amount of loan asked for it appears doubtful whether the loan can be considered as necessary for the good management

of the land. In view of this legal position, it would not be advisable to advance a loan of Rs.20,000 to Mr. Pandya unless he furnishes adequate security.

Cd/.....3/6.

Remembrancer of Legal Affairs.

U.R. to D.D.No.6241 dated the 4th June1969.

Submitted for signature.

D.R.

6/6.

Se.

Office of the D.L.A.

The Bombay Land Improvements Schemes Act, 1942. section 23(1).

The action would be in tort and Government not being liable for the tort committed by its servants would not be required to pay any compensation to the applicant.

Section 23(1) of the Bombay Land Improvement Schemes Act, 1942 gives protection to public servants who have executed the scheme. Consequently even the public servants would not be liable to pay compensation to the applicant unless bad faith is proved against them.

Sd/.....2/8.

Encumbrancer of Legal Affairs.

U.R. to A.& P.D., No. 6707, dated the 3rd August 4

DYR.

6/8.

Se.

Office of the R.L.A.

Bombay
Land
Improvement
Schemes
Act, 1942.

Section 25.

Seen and returned.

The view taken by the Soil Conservation Officer is correct. Section 25 of the Bombay Land Improvement Schemes Act, 1952 is an x enabling provision. If the consent of the people for the scheme is forthcoming, the question of exercise of Government's powers under section 25 does not arise even if the scheme is to be subsidised by Government.

Sd/.....20/8.
Remembrancer of Legal Affairs.

U.E. to A.G F.D.No.9621, dated the 25th August 1949.

DYR.
6/6.
Se.